IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 671 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BHANVARLAL KANAIYALAL

Appearance:

1. Criminal Appeal No. 671 of 1990

MR KOGJE, A.P.P. for Petitioner No. 1

MR NALIN K THAKKER for Respondent No. 1

NOTICE SERVED for Respondent No. 1,2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 05/02/2003

ORAL JUDGEMENT

1. The State of Gujarat has filed this Appeal against the Judgment and order of acquittal dated 26.2.1990 passed by the learned Judicial Magistrate, First Class, Gandhidham in Criminal Case No.3476 of 1985 whereby the learned Magistrate acquitted the respondents

- accused for the offences u/ss. 7(i)(ii) r/w Sections 2(ia)(M) r/w Sections 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short "The Act").

2. In the instant case Food Inspector Shri J.M.Tekwani went to the house of the respondent - accused on 14.8.1985 at 6.30 p.m. and collected sample of standardized milk. The same were sent to the Public Analyst by his Report. The Report of the Public Analyst shows that milk fat was 3 % whereas minimum requirement was 4.5 %. Thus, it was less by 1.5 % and accordingly it was not conforming to the standards laid down under the Prevention of Food Adulteration Rules, 1955. Therefore, the complaint was filed by the complainant before the Court of learned Magistrate against the accused for the aforesaid offence. The learned Magistrate by his impugned Judgment and order of acquittal dated 26.2.1990 acquitted the accused on the grounds mentioned in it.

3. learned A.P.P. Shri Kogje vehemently submitted that the learned Magistrate committed an error in acquitting the accused on the grounds that the bottles in which the sample was taken was not the milk. He submitted that under his supervision his peon clean the bottles before taking the samples and therefore the learned Magistrate should not have acquitted the accused.

4. Having carefully gone through the impugned Judgment and order passed by the learned Magistrate and the reasons assigned by the learned Magistrate in acquitting the accused, I am of the considered opinion that no interference is called for in such type of cases when the offence was committed almost before more than 17 years from today. The standard of milk fat was found later on marginal side. In the instant case as per the Report of the Public Analyst there was marginal difference in milk fat and it was not the case of the prosecution that otherwise the sample of milk was found to be injurious to the health. In such type of case this Court would not like to interfere with the impugned order of acquittal passed by the learned Magistrate after lapse of so many years.

In view of the above discussion this Appeal fail and is hereby dismissed.

sd/-

Date : February 05, 2003 (B.J.Shethna, J.)

sas